

REMARKS/ARGUMENTS

1. Introduction

Applicant has carefully considered all of the Examiner's comments. Claim 1 is alleged objected. Claims 8-16, and 29-33 are alleged rejected. Claims 1-33 are pending. Claims 8 and 29 have been amended. Applicant responds below.

The finality of the action is respectfully traversed below due to Examiner's new grounds of rejection on non-amended claims. Applicant respectfully requests rescission of the finality of the action.

2. Claim Rejections – 35 U.S.C. § 103(a)

Claims 8-16 "rejected under 35 U.S.C. 103(a) as being unpatentable over Dennis (US Patent 4,020,346)." Applicant has amended claim 8 to include "an attenuator that has calibration steps disposed between the source and detector of ionizing radiation". Therefore, it is submitted that the rejections of the independent claim 8 and its dependent claims 9-16 are now moot, as Dennis fails to contain "an attenuator that has calibration steps disposed between the source and detector of ionizing radiation". Applicant respectfully requests reconsideration of these claims.

Claim 29 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Gray (US Patent 6,526,120) and Dykster (US Patent 5,712,893. Further rejections of dependent claims 30 – 33 are made for various reasons. Applicant has amended independent claim 29 to contain "an attenuator that has calibration steps disposed between the generating means and the X-ray image intensifier". Applicant respectfully traverses these claim 29-33 rejections since none of the cited art contains "an attenuator that has calibration steps disposed between the generating means and the X-ray image intensifier". Applicant respectfully requests reconsideration based on the amended base claim.

3. Additional Claim Fees

No claims have been added, therefore there is no additional claim fee.

4. Finality of Office Action is in Error

MPEP § 706.07(a) second ¶¶ states:

"Furthermore, a second or any subsequent action on the merits in any application or patent undergoing reexamination proceedings will not be made final if it includes a rejection, on newly cited art, other than information submitted in an information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17 (p), of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art."

This is a second or subsequent action on the merits on this application, therefore it should **"not be made final if it includes a rejection, on newly cited art...of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art"** (citing the paragraph above, adding emphasis). Here, claims 8-16 had not been amended as of Applicant's Response sent September 21, 2005, and were rejected as being unpatentable over Dennis (US Patent 4,020,346). Dennis was newly cited art. These facts would appear to be in violation of USPTO practice as stated in MPEP § 706.07(a) second ¶¶ .

No new matter has been introduced.

5. Conclusion

In view of the above, Applicant has fully responded to the Office Action. It is believed that all pending claims are now in a condition for immediate allowance.

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Respectfully submitted,

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